

September 4, 2002

**Memorandum of Ex Parte Communication**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Ms. Dortch

Re: In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338;

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; and

Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

In April 2002, BellSouth, SBC, Qwest and Verizon submitted the UNE Fact Report 2002 ("the Fact Report"), a detailed examination of the state of competition in the local exchange marketplace. In their reply comments, NewSouth Communications seeks to impugn just one of the literally thousands of facts in the Fact Report in a misguided attempt to establish that "the veracity of the report is highly questionable."<sup>1</sup> But even with respect to the single fact about which NewSouth complains, it is wrong.

NewSouth claims that the Fact Report "erroneously identifies NewSouth as a source of alternative fiber available for transport or local loop purposes" "in 14 MSAs."<sup>2</sup> NewSouth mischaracterizes the information contained in the Fact Report.

<sup>1</sup> See Reply Comments of NewSouth Communications ("New South Reply"), filed July 17, 2002, pages 44-45 and the affidavit of John Fury at paragraph 21

<sup>2</sup> NewSouth Reply at 45 (citing Appendix K of the UNE Fact Report 2002)

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Appendix K of the Fact Report lists NewSouth with voice or data networks in 32 of the top 150 MSAs. The underlying source used in the Report – New Paradigm Resources Group’s *CLEC Report 2002, 15<sup>th</sup> edition* – confirms that New South has voice or data networks in each of the MSAs cited in the Fact Report. Based on the New Paradigm report, Appendix K states that NewSouth had either “operational” or “on-net” networks in those areas, which “appear to involve the use of a CLEC’s own facilities” – though, not necessarily, its own fiber.<sup>3</sup> The Fact Report made clear that “[t]hese totals may include some networks or parts of networks that CLECs operate with facilities leased from a third party, including an ILEC.”<sup>4</sup>

While NewSouth claims that it does not “own fiber facilities” in “any market,” its website confirms that it operates an “extensive *leased* fiber network.”<sup>5</sup> According to its own press release, a copy of which is attached, NewSouth leases much of its fiber from DukeNet Communications, the telecommunications unit of Duke Energy.<sup>6</sup> This is entirely consistent with the Fact Report’s characterization of NewSouth’s network. Moreover, as the Fact Report stated, this goes to show that CLECs are able to satisfy their needs for fiber from third-party suppliers.

In sum, NewSouth’s attacks on the accuracy of the Fact Report are unfounded. Their comments mischaracterize the information in the Fact Report and as a result cannot be relied upon by the Commission.

We are submitting the original and one copy of this Memorandum to the Secretary in accordance with Section 1.1206 of the Commission’s rules. Please include a copy of this submission in the record of the above-listed proceedings. If you have any questions, please contact one of the individuals below.

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<sup>3</sup> UNE Fact Report 2002 at K-1. The New Paradigm CLEC Report 2002 describes NewSouth Communications as a switched-based provider that “is leasing high-bandwidth digital transmission facilities based on DSL and other technologies from ILECs, CLECs and CAPs to connect its switching platforms to customer premises.” New Paradigm, CLEC Report 2002 (15th ed), at Ch. 6, New South Communications Corp. at 4.

<sup>4</sup> The UNE Fact Report 2002 at III-7 n. 34.

<sup>5</sup> NewSouth Communications, *Our SmartBuild Strategy*, <http://www.newsouth.com/technology/network/strategy.asp> (emphasis added).

<sup>6</sup> NewSouth Communications Press Release, *NewSouth Communications Teams with DukeNet Communications for Fiber Optic Network Services* (Apr. 26, 2000), [http://www.newsouth.com/news/press\\_releases/a303.asp](http://www.newsouth.com/news/press_releases/a303.asp).

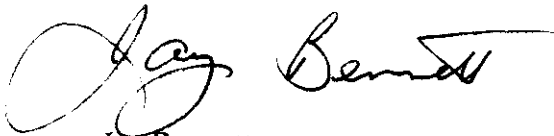
Sincerely,



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Attachment

cc: J. Miller  
T. Navin  
R. Tanner

NewSouth Communications currently offers a comprehensive selection of products including high-speed Internet access, DSL, data, local exchange, long distance, and enhanced telecommunications services, all on one invoice, throughout the southern United States, including the BellSouth (NYSE:BLS), Sprint United (NYSE: FON), and GTE (NYSE: GTE) service regions. The Company offers service in Florida, South Carolina,

Tennessee, North Carolina, Georgia, Alabama, Kentucky, Mississippi, and Louisiana and selected services in eight adjoining states.

For more information, visit the Company's web site at <http://www.newsouth.com> or contact Susanne Hite at [hite@newsouth.com](mailto:hite@newsouth.com).

#### **About Duke Net Communications:**

DukeNet Communications, Inc. is a "carrier's carrier," providing fiber optic and wireless digital network communications systems and services to national and regional wireless carriers, inter-exchange carriers, competing local exchange carriers, cable companies and Internet service providers. DukeNet is the telecommunications unit of Duke Energy Corporation, a diversified multi-national energy company that creates value for customers and shareholders through an integrated network of energy assets and expertise. Duke Energy manages a dynamic portfolio of natural gas and electric supply, delivery and trading businesses -- *generating revenues of nearly \$22 billion in 1999*. Duke Energy, headquartered in Charlotte, N.C., is a Fortune 100 company traded on the New York Stock Exchange under the symbol DUK. More information about the company is available on the Internet at [www.duke-energy.com](http://www.duke-energy.com).

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